

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/691,746

First named inventor: Dimitry Shur

Filed: 10/22/2003

Art unit: 2881

Examiner: Johnston, Phillip A.

Confirmation No.: 1979

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450.

**RESPONSE TO OFFICE ACTION**

Sir:

Reconsideration of this application is respectfully requested.

The present claims are patentable over the cited references. For example, it apparent from Figures 1a, 1b, 2a and 2b of Chen, US Patent 6,064,486, that the techniques described therein are directed to the use and detection of alignment marks where the first feature (using the Office action's definition of same as the trench or mesa formed over the alignment mark) overlaps the second feature. Hence, Chen cannot anticipate the subject matter presently claimed.

Bowes, US Patent 6778275, shows in Figure 6 a situation where alignment marks are disposed at various layers of a semiconductor device under fabrication. Importantly, where such marks exist in a second layer disposed beneath a first layer, those buried marks do not affect a shape of an area of the first layer, as recited in the claims. Therefore, the combination of Chen and Bowes may suggest structures which include such "buried" marks it also suggests that those structures will be formed so that the buried mark does not affect the layer under which it is buried. Because such a structure would be significantly different from that recited in the claims, these claims are patentable over this combination of references.